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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 PATRICK LOWDEN AND CHRISTI
11 LOWDEN,

12 Plaintiff,

13 v.

14 MAGGIE MILLER-STOUT, *et al.*

15 Defendants.

Case No. 08-5365 BHS/KLS

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

This civil rights action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the Court is Plaintiffs' motion for appointment of counsel. (Dkt. # 9). Having carefully reviewed Plaintiffs' motion, Defendants' response (Dkt. # 10), and the balance of the record, the Court finds, for the reasons stated below, that Plaintiffs' motion should be denied.

I. DISCUSSION

There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983. Although the court, under 28 U.S.C. § 1915(d), can request counsel to represent a party proceeding *in forma pauperis*, the court may do so only in exceptional circumstances. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984); *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to

1 articulate his claims *pro se* in light of the complexity of the legal issues involved. *Wilborn*, 789
2 F.2d at 1331. Neither of these factors is dispositive and both must be viewed together before
3 reaching a decision on request of counsel under Section 1915(d). *Id.*

4 Plaintiffs have demonstrated an adequate ability to articulate their claims *pro se* and have
5 not demonstrated that the issues involved in this case are complex or that they have had any
6 difficulties in expressing them. Plaintiffs are articulate and bring their claims in a very clear and
7 organized manner. While Plaintiffs may not have vast resources or legal training, they meet the
8 threshold for a pro se litigant. Plaintiffs' concerns regarding investigation and discovery, an
9 absence of legal training and limited access to legal materials are not exceptional factors, but are the
10 type of difficulties encountered by many pro se litigants. Further, there are numerous avenues of
11 discovery available to the parties through the Federal Rules of Civil Procedure during the litigation
12 process.

13 Plaintiffs also state that there is a likelihood of success on the merits, however, they have
14 not provided any information to support this contention other than to state generally that their
15 allegations as stated in their complaint establishes a violation of their right to equal protection under
16 the law and their belief that discovery will confirm an exception to the prison policy at issue and
17 possibly others. This is not sufficient to carry the burden under this prong. *See, e.g., Wilborn*, 789
18 F.2d at 1331. Accordingly, the Court finds that counsel is not necessary in this case.

19 Accordingly, Plaintiff's motion to appoint counsel (Dkt. # 9) is **DENIED**.

20 The Clerk is directed to send copies of this Order to both Plaintiffs and counsel for
21 Defendants.

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23 DATED this 25th day of July, 2008.

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25 
Karen L. Strombom

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27 United States Magistrate Judge